

Decision **DRAFT DECISION OF EXAMINER CLARK** (Mailed 8/19/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Catalina Freight Line, a California Corporation, for authority to establish a Zone of Rate Freedom for its vessel common carrier service for the transportation of freight between Los Angeles Harbor and Catalina Island, California and for an ex parte order authorizing the same.

Application 01-09-034
(Filed September 26, 2001)

O P I N I O N**Summary**

This decision denies the application of Catalina Freight Line (Applicant or CFL), a corporation, to establish a Zone of Rate Freedom (ZORF).

This decision also vacates and replaces Decision (D.) 02-08-017 that was erroneously included on the Commission's August 8, 2002, Consent Agenda Item CA-11. D.02-08-017 did not include the date or receipt of comments.

Background

Applicant is authorized to operate as a vessel common carrier (VCC) to transport freight between the Port of Los Angeles and Catalina Island. Current tariff rates filed with the Commission were authorized by D.91-05-053 pursuant to Public Utilities (Pub. Util.) Code § 454. Applicant requests authority to establish a ZORF of 30% above and 20% below the rates published in its tariff, CA PUC No. 2, Local Freight Tariff 1.

Applicant states that it provides transportation across a full spectrum of freight services. It claims that it competes with several other VCCs in this market, namely, Sylvester Tugs, Catalina Channel Express, Inc., and Red and White Cruises. It cites Catalina Flying Boats, an airfreight carrier, as another

competitor. Applicant also refers to the competitive services offered by Island Express, but it does not say whether this is a vessel or air carrier.

Applicant notes that the Commission previously granted a ZORF to Catalina Channel Express, Inc. (Express). It states that it needs the rate flexibility that a ZORF would provide in order to compete.

Discussion

The ZORF is a ratesetting concept the Commission has utilized with respect to passenger stage carriers under Pub. Util. Code § 454.2 for many years. This section states:

“Notwithstanding Section 454, the Commission may establish a ‘zone of rate freedom’ for any passenger stage transportation service which is operating in competition with other passenger transportation service from any means of transportation, if the competition together with the authorized zone of rate freedom will result in reasonable rates and charges for the passenger stage transportation service. An adjustment in rates or charges within a zone of rate freedom established by the Commission is hereby deemed just and reasonable. The Commission may, upon protest or on its own motion, suspend any adjustment in rates or charges under this section and institute proceedings under its rules of practice and procedure.”

The Commission extended the ZORF concept to VCCs in the 1998 decision¹ that authorized Express’ ZORF. We concluded that authorization of ZORFs is consistent with our policy of relying upon competition to regulate the

¹ D.98-12-016 in Application (A.) 98-04-051.

transportation marketplace, where competition exists between substantially similar established carriers. We found that Express' cross-channel passenger transportation services operated in competition with services provided by substantially similar VCCs, and that a ZORF of up to 10% above or below Express' authorized fares would be fair and reasonable.

Applicant understands the salient issues in this matter. The Scoping Memo that accompanied the application describes them as:

1. Finding that Applicant operates in competition with other substantially similar freight transportation services and/or with competitive freight transportation services by other means.
2. Finding that these competitive services will result in reasonable rates and charges when considered along with the ZORF.

Applicant has not adequately addressed these issues, however. It gives only the barest descriptions of its own and its asserted competitors' services to support its claim that it operates in a competitive environment. The Commission's official records provide the only other information upon which we can base findings in this proceeding.

The decision² that granted a VCC certificate to Antone Sylvester Tug Service, Inc. (Sylvester) describes CFL's services as follows:

"CFL transports all types of freight between its terminal in Wilmington and freight ramps near Avalon and the Isthmus on Santa Catalina Island, in semi-trailers which are rolled onto and off of barges moved across the channel by tugs. CFL's tariff lists cross-channel service *only* to these two island destinations, but CFL arranges to have its affiliate, Seaway

² D.99-10-067 in A.99-01-018. CFL was a protestant to this application.

Company of Catalina, truck goods without additional charge from Avalon and the Isthmus to its shippers on many other parts of the island. In some cases, shippers make their own arrangements to move freight from CFL's island ramps to distant island locations. Cross-channel charges are based on weight. During the busy summer season, CFL runs five and sometimes six round trip barges weekly, tapering down to perhaps three round trips weekly during the winter. It characterizes this as 'scheduled service,' although there is no schedule published in the tariffs or elsewhere shippers may refer to, and the carrier varies the number of weekly trips and departure times depending on demand and tides. CFL has apparently from time to time also used its barges to provide non-tariffed service directly to island destinations other than Avalon and the Isthmus."

Applicant's filed tariff shows that it offers to transport freight of nearly every kind and size. It publishes rates in cents per 100 pounds, with the rates declining as shipments reach minimum weights of 5,000, 20,000 and 30,000 pounds.³

Below is a summary of the services offered by the other carriers named by Applicant, based on our records and the limited information contained in the application.

- **Antone Sylvester Tug Service**
The carrier's certificate (VCC 75) includes authority to transport property on a nonscheduled basis between the mainland and points on Catalina Island, except, Avalon and Isthmus. Its tariff charges are based on the number of hours a vessel is in service to the shipper.
- **Catalina Channel Express, Inc.**
The carrier is authorized to transport passengers and their

³ A rate schedule attached to the application shows the 30,000-pound minimum weight bracket extending to a maximum of 500,000 pounds.

baggage to Catalina Island. Its certificate (VCC 52) also authorizes the transportation of newspapers, periodicals and mail (although it does not offer to transport these articles in its filed tariff).

- **Red & White Cruises** (aka Catalina Classic Cruises, Inc.)
This carrier's request for authority to operate as a VCC was still pending when Applicant was preparing its application. Applicant cites Red & White Cruises prospectively as another source of competition. By D.01-09-061 we granted the carrier an interim certificate (VCC 86) to operate from Long Beach and San Pedro to Catalina Island. It transports passengers, their baggage, and accompanying articles under the certificate.
- **Catalina Flying Boats**
Applicant advises that this company provides airfreight service to Catalina. Our only other knowledge of this operator's services comes from its 1996 application,⁴ in which it stated that it transports "UPS, mail, FedEx, RPS, Airborne, and business freight."
- **Island Express**
We have no information regarding this company other than Applicant's statement that it provides "limited freight service in conjunction with its passenger service."

Applicant has not demonstrated that it operates in a competitive market. Sylvester, the one other VCC that transports freight exclusively, is prohibited from serving Avalon and the Isthmus, Applicant's two service points on Catalina Island. Also, Sylvester offers shippers "on call" service at hourly rates while Applicant offers regular cross-channel service. It is reasonable to expect that parties tendering small shipments would not want to engage one of Sylvester's

vessels on an hourly basis.⁵ It is nevertheless possible that the two freight carriers compete for some of the same shipping business, but Applicant has not established that.

To the extent that any of the other named VCCs provide freight service, it is but a minor adjunct to their cross-channel passenger services. Applicant has not adequately described the competition it faces from airfreight service, including information about the availability of service, the kinds and sizes of shipments transported, and the rates charged.

We cannot find that Applicant operates in competition with substantially similar vessel freight transportation services or competitive services of other means. Accordingly, we are unable to conclude that the requested ZORF would result in reasonable rates and charges. The application should therefore be denied. Absent more compelling information regarding competitive services to support a ZORF request, Applicant will have to make the necessary showing under Pub. Util. Code § 454 if it wishes to increase its rates.

Notice of filing of the application appeared in the Commission's Daily Calendar on October 3, 2001.

In Resolution ALJ 176-3073 dated October 10, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest has been received.

⁴ Commercial air operators are required to file evidence of liability insurance with the Commission pursuant to Pub. Util. Code §§ 5501 *et. seq.*, and General Order No. 120-Series.

⁵ According to Sylvester's tariff, its hourly rates are computed starting from the time service is requested to be available to the requesting party and ending upon return of the vessel to its home port upon completion of the service.

Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3073.

Comments on Draft Decision

The draft decision of Examiner Clark in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____.

Findings of Fact

1. Applicant is currently authorized to operate as a VCC transporting freight between the Port of Los Angeles and Catalina Island.
2. The Commission extended the ZORF concept to VCCs by D.98-12-016.
3. Applicant requests authority to establish a ZORF of 30% above and 20% below any of its current authorized rates filed with the Commission.
4. Applicant has failed to demonstrate that it operates its service in competition with substantially similar vessel freight transportation services or services of other means.
5. Applicant has not established that a ZORF will result in reasonable rates and charges.

Conclusions of Law

1. Applicant has not shown that a ZORF is justified.
2. The application should be denied.

O R D E R

IT IS ORDERED that:

1. The application of Catalina Freight Line for a Zone of Rate Freedom is denied.
2. Decision 02-08-017 is vacated and replaced by this order.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.